

WEDNESDAY, FEBRUARY 6, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 9:31 a.m. and reconvened immediately into closed session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation, Revenue and Taxation Code sections 7093.5, 7093.5(b)(3), 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 9:35 a.m. and reconvened immediately into open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

### **BUSINESS TAXES APPEALS HEARINGS**

The Golden 1 Credit Union, 103814  
10-1-97 to 12-31-00, \$ Unspecified Tax

For Petitioner:

Rex Halverson, Representative

Stacy Fifield, Vice President, Golden 1 Credit Union

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether claimant is entitled to certain deductions for bad debts arising from direct loans.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the petition be granted.

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

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Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 2.4).

Edward Steele, Chief, Financial Management Division, Headquarters  
Faith A. Wagner, Tax Technician II, Audit Control Unit, Headquarters  
Larry Augusta, Assistant Chief Counsel, Legal Division, Headquarters

Action: Approve the Board Meeting Minutes of: November 28-29, 2001 and December 19-20, 2001.

Action: Approve non-substantive revisions to Audit Manual chapters 1, 2, 3, 4, 6 and 8; and substantive revisions to Audit Manual chapters, 2, 4, 6, 7 and 8 (Exhibit 2.5).

Exhibits to these minutes are incorporated by reference.

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING**

#### **Adoption of changed version of Cigarette and Tobacco Products Tax**

Janice Thurston, Assistant Chief Counsel, Business Taxes Section, Legal Division, made introductory remarks regarding Cigarette and Tobacco Products Tax Law, Regulations 4011, Distributors not Engaged in Business in this State, and 4061, Unused Stamps and Unused Meter Settings.

Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the changed versions of Regulations 4011 and 4061 (Exhibit 2.6).

### **PROPERTY TAX MATTERS**

#### **State Assessee Petitions for Reassessment of Unitary Value, Not Subject to Contribution Disclosure Statute**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs absent, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the following:

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***Consideration of Findings and Decisions***

360Networks (USA), Inc., 130876

2001, \$95,100,000.00 Value

Action: Adopted the Findings and Decisions as recommend by staff. Ms. Mandel not participating.

Southern California Edison Company, 133642

2001, \$7,100,000,000.00 Value

Action: Adopted the Findings and Decisions as recommend by staff. Ms. Mandel not participating.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

PMS A California General Partnership, 89000965660

7-1-94 to 9-30-95, \$72,243.00 Tax

Considered by the Board: Hearing Notice Sent – Appearance Waived

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Basics Etc. Corporation, 89000204000

10-1-93 to 12-31-96, \$20,749.83 Tax

Considered by the Board: December 20, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Pinedale Auto Sales, Inc., 89000388860

10-1-94 to 9-30-97, \$23,569.07 Tax

\$2,662.78 Penalty, Negligence

Considered by the Board: October 25, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Mr. Andal moved the petition be redetermined as recommended by the Appeals Section.

Mr. Parrish offered a substitute motion to remove the negligence penalty. The motion failed for lack of a second.

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Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Mr. Klehs stated for the record he would have voted with the majority in the following matters: *PMS A California General Partnership, 89000965660*, and *Basics Etc. Corporation, 89000204000*.

Daniel J. Genter, 89001149420

3-31-98, \$00.00 Tax

Considered by the Board: October 4, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Action Medical Products, Inc., 57424

5-10-91 to 12-31-98, \$33,550.51 Tax

\$00.00 Penalty, Negligence

Considered by the Board: August 15, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be granted.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no, the Board directed the Appeals Section to prepare a memorandum opinion.

Bernard Gregory Ross & Ronald Eric McMillan, 89000035410

10-1-94 to 12-31-96, \$43,985.62 Tax

\$00.00 Penalty

Considered by the Board: July 12, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: (Expunged)

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Fereydoun Saidi and Hussein Saidi, 41193

1-1-96 to 3-31-98, \$3,012.32 Tax

Considered by the Board: December 19, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered to deny the petition for rehearing.

Bernard Gregory Ross & Ronald Eric McMillan, 89000035410

10-1-94 to 12-31-96, \$43,985.62 Tax

\$00.00 Penalty

Considered by the Board: July 12, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered to deny the petition for rehearing.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

LaVonne A. Hodgson, 47679

1994, \$4,454.00 Assessment

\$1,113.50 Penalty, Late Filing

\$1,113.50 Penalty, Demand

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the formal opinion.

Save Mart Supermarkets & Subsidiary, 61548

1996, \$235,938.00 Assessment

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no, the Board adopted the formal opinion 1.

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**Marianna T. Greene, 111255**

1994, \$586.000 Assessment

Considered by the Board: January 10, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Dismissed for lack of jurisdiction.

**Glen A. Blair, 115255**

1997, \$2,282.00 Assessment

1998, \$2,485.00 Assessment

\$621.25 Penalty, Delinquent

\$621.25 Penalty, Notice &amp; Demand

Considered by the Board: January 10, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000 frivolous appeal penalty.

**LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

**Mary Cogar Melton and James Melton, 89002285820**

5-1-94 to 6-30-97, \$00.00 Tax

\$00.00 Penalty, Finality

Action: Redetermine as recommended by the Appeals Section.

**Unique Performance, Inc., 87624**

7-1-96 to 9-30-99, \$39,225.36 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

**Reinhard Stadler, 49630**

10-1-91 to 6-15-95, \$83,982.04 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

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Ellenried, LP, 84649

6-16-95 to 3-31-00, \$224,611.50 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

Robert L. Miller Inc. and O &amp; B Equipment Inc., 60812

7-1-96 to 6-30-98, \$10,479.62 Tax

\$1,004.66 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Kim Lynn Nguyen, 97980

1-1-97 to 12-31-99, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Goldberg Moser O'Neill, 89002140990

1-1-95 to 6-30-96, \$00.00 Tax

Goldberg Moser O'Neill, LLC, 89002082480

7-1-96 to 12-31-97, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

With respect to the Corporate Franchise and Personal Income Tax Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Lucio Ambroselli, 27108

1993, \$47,451.00 Tax

\$00.00 Penalty, Accuracy

Action: Sustain the action of the Franchise Tax Board

Jack E. and Deline M. Easterday, 94727

1994, \$2,400.00 Tax

1995, \$32,014.00 Tax

\$4,588.00 Penalty, Accuracy

Action: Reverse the action of the Franchise Tax Board.

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Edward Chang, 99934

1998, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael O. Daniels, 105031

1998, \$5,593.00 Tax

\$1,398.25 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500 frivolous appeal penalty.

Lynn A. Buckler, 109332

1998, \$6,373.00 Tax

\$00.00 Penalty, Late Filing

\$00.00 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000 frivolous appeal penalty.

Daniel and Susan Thompson, 112549

1997, \$1,348.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

M. A. Zaki, 112550

1997, \$8,395.87 Tax

Action: Sustain the action of the Franchise Tax Board.

Randy E. Paden, 113643

1997, \$667.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Rentz Christian &amp; Company, 113651

1998, \$3,295.29 Tax

\$1,844.64 Penalty

Action: Sustain the action with concession by the Franchise Tax Board.

Raymond and Sheila Anderson, 113998

1997, \$854.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Dorothy Turner-Gayle, 114018

1997, \$2,212.00 Tax

Action: Sustain the action of the Franchise Tax Board.



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Manish J. Gajjar, 114276

1997, \$149.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Susan Amenda-Garateix, 115768

1997, \$254.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Tisha Ayotte, 118675

1996, \$348.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard A. Lenard, 126812

1995, \$886.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Donald D. and Karen F. Locke, 126814

1997, \$893.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Delgado, 129715

1997, \$950.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Debra L. Millet, 133797

1994, \$711.13 Tax

Action: Sustain the action of the Franchise Tax Board.

Kazimierz and Celia J. Janka, 136326

1995, \$528.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Claire E. Scherzer, 89002458880

1991, \$4,934.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Irwin and Shirley Lachman, 32939

1991, \$182,781.00 Tax

\$36,556.20 Penalty, Accuracy

Action: Deny the petition for rehearing.

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Thomas Wayne Kabis, 53615

1997, \$1,887.00 Tax

\$441.75 Penalty, Late Filing

\$965.75 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Joseph E. Marcoux, 79927

1997, \$1,156.00 Tax

\$289.00 Penalty, Late Filing

Action: Deny the petition for rehearing.

Alphonso Eiland, 80235

1997, \$541.00 Tax

\$135.25 Penalty, Late Filing

Action: Deny the petition for rehearing.

Linda N. Krieg, 8011

1998, \$6,563.00 Tax

\$1,640.75 Penalty, Late Filing

\$1,640.75 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Won S. and Insook Yoo, 92178

1991, \$187,279.00 Tax

1993, \$14,890.00 Tax

1994, \$50,634.00 Tax

Action: Deny the petition for rehearing.

Prapapun Zielke, 92250

1998, \$402.00 Tax

\$100.50 Penalty, Late Filing

\$159.50 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Oliver D. Gildersleeve, Jr., 102695

1994, \$1,177.00 Tax

Action: Deny the petition for rehearing.

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Douglas C. Roberts, 104296

1996, \$40.00 Tax

Action: Deny the petition for rehearing.

Estate of Sheldon D. Blair, Deceased, and Devona A. Siner, 105018

1997, \$108.00 Tax

Action: Deny the petition for rehearing.

Theron Johnson, 111269

1997, \$2,915.00 Claim for Refund

1998, \$5,097.00 Claim for Refund

1999, \$5,922.00 Claim for Refund

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
CONSENT**

The Board deferred consideration of matters: *Willemena Gordon, 113498;*  
*Venicio F. Jesuitas, 129875;* and *Alfred Aguirre, 138471.*

With respect to the Homeowner and Renter Property Tax Assistance Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Willemena Gordon, 113498

2000, \$1.00 or more Claim for Credit

Action: The Board deferred consideration of this matter.

Trena M. Roberts, 114893

1997, \$1.00 or more Claim for Credit

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Herbert Senegal, 126995

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Mary Rhoden, 127481

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Igale Shadian, 129775

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Antionette Evans, 129823

2000, \$600.00 Claim for Credit

Eric Allen-Means, 129825

2000, \$600.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Venicio F. Jesuitas, 129875

2000, \$1.00 or more Claim for Credit

Action: The Board deferred consideration of this matter.

Theresa Williams, 130406

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Richey Deloney, 133095

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Luzviminda E. Mabao, 133429

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Pamela J. McConnell, 133436

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lamar A. Bradley, 136322

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alfred Aguirre, 138471

2001, \$1.00 or more Claim for Credit

Action: The Board deferred consideration of this matter.

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**SALES AND USE TAX MATTERS, REDETERMINATIONS, DENIALS OF RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

**PTO Sales Corporation, 104696**

1-1-97 to 6-30-99, \$68,488.46

Action: Approve redetermination as recommended by staff.

**Automated Health Systems Laundry, Inc., 28046**

4-1-96 to 11-26-96, \$138,998.18

Action: Approve redetermination as recommended by staff.

**Sequoia Systems Inc., 89000863700**

4-1-93 to 3-31-96, \$353,026.02

Action: Approve redetermination as recommended by staff.

**Howmet Cercast S N C, 93422**

4-1-6 to 12-31-99, \$371,548.08

Action: Approve redetermination as recommended by staff.

**Mesh Inc., 136116**

3-31-00, \$605,368.78

Action: Approve redetermination as recommended by staff.

**I'No Inc., 92511**

2-28-97 to 12-31-97, \$86,517.83

Action: Approve redetermination as recommended by staff.

**I'No Inc., 117159**

1-1-98 to 12-31-99, \$171,689.19

Action: Approve redetermination as recommended by staff.

**Printech Equipment Inc., 143585**

10-1-91 to 12-31-98, \$523,679.33

Action: Approve redetermination as recommended by staff.

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Adaptec Inc., 151644

1-1-96 to 9-30-98, \$151,140.56

Action: Approve denial of claim for refund as recommended by staff.

Bombardier, Inc., 151695

3-1-98 to 4-30-98, \$535,932.78

Action: Approve denial of claim for refund as recommended by staff.

Avado Brands Inc., 145804

4-1-1 to 6-30-01, \$80,432.80

Action: Approve relief of penalties as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in *Bombardier, Inc.*, 52653, the Board made the following orders:

East Coast Bagel Company Incorporated, 150585

1-1-99 to 6-30-99, \$267,904.58

Action: Approve credit and cancellation as recommended by staff.

First Security Bank Na, Tr, 151056

6-30-97 to 6-30-97, \$3,881,831.19

Action: Approve credit and cancellation as recommended by staff.

Bellissimo Inc., 151064

6-27-97 to 6-27-97, \$52,386.76

Action: Approve credit and cancellation as recommended by staff.

Norman &amp; Eileen Kreiss Family Trust

7-23-98, \$151,357.46

Action: Approve credit and cancellation as recommended by staff.

Purwin Company LLC, 149984

9-29-98, \$92,428.83

Action: Approve credit and cancellation as recommended by staff.

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David Muller, 149749

4-10-00, \$102,880.18

Action: Approve credit and cancellation as recommended by staff.

Airstar International Inc., 151332

4-3-00, \$103,152.50

Action: Approve credit and cancellation as recommended by staff.

Ogden Flight Services Group, 146661

10-1-00 to 12-31-00, \$89,627.55

Action: Approve credit and cancellation as recommended by staff.

Shako Energy, Inc., 150190

4-1-96 to 6-18-96, \$195,360.57

Action: Approve credit and cancellation as recommended by staff.

Hitachi Seiki U.S.A. Inc., 138865

1-1-00 to 3-31-00, \$55,572.01

Action: Approve refund as recommended by staff.

Bancamerica Auto Finance Corporation, 140609

4-1-1 to 5-31-01, \$1,863,588.23

Action: Approve refund as recommended by staff.

Regents University Cal. Sta. Babra., 134059

1-1-97 to 3-31-00, \$76,582.65

Action: Approve refund as recommended by staff.

Anthony Manufacturing Corp., 115609

1-1-00 to 6-30-00, \$91,559.51

Action: Approve refund as recommended by staff.

Vidfilm Services Inc., 79084

4-1-97 to 12-31-00, \$187,000.52

Action: Approve refund as recommended by staff.

Simco Fast Foods Inc., 132013

4-1-98 to 3-31-01, \$68,240.13

Action: Approve refund as recommended by staff.

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Quiel Bros. Electric Sign Service Company, 77987

4-1-97 to 3-31-01, \$143,240.20

Action: Approve refund as recommended by staff.

Saddleback Memorial Medical Center, 145870

7-1-00 to 9-30-01, \$51,724.14

Action: Approve refund as recommended by staff.

Sony Corporation of America, 118743

1-1-00 to 3-31-00, \$361,633.25

Action: Approve refund as recommended by staff.

Professional Hospital Supply, Inc., 106997

7-1-98 to 12-31-00, \$154,538.49

Action: Approve refund as recommended by staff.

Condor Systems Inc., 97583

1-1-00 to 3-31-00, \$110,889.55

Action: Approve refund as recommended by staff.

Adaptec Inc., 89000658900

1-1-96 to 6-30-99, \$568,832.07

Action: Approve refund as recommended by staff.

Fujitsu Network Comm., Inc., 135206

4-1-1 to 6-30-01, \$103,366.81

Action: Approve refund as recommended by staff.

Rancher's Tractor Company Incorporated, 145914

7-1-98 to 6-30-01, \$164,216.19

Action: Approve refund as recommended by staff.

The Golden 1 Credit Union, 103814

10-1-97 to 12-31-00, \$196,730.57

Action: Approve refund as recommended by staff.

McKesson general Medical Corporation, 80361

4-1-97 to 12-31-00, \$67,292.00

Action: Approve refund as recommended by staff.



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Opex Corporation, 143204

1-1-98 to 12-31-00, \$75,735.31

Action: Approve refund as recommended by staff.

Appgate Inc., 94424

8-31-00, \$169,043.60

Action: Approve refund as recommended by staff.

Proquire LLC, 139844

4-1-01 to 6-30-01, \$151,925.26

Action: Approve refund as recommended by staff.

Avaya Incorporated, 140611

1-1-01 to 3-31-01, \$1,605,861.90

Action: Approve refund as recommended by staff.

Bombardier, Inc., 52653

1-1-98 to 6-30-98, \$1,954,450.19

Action: Approve refund as recommended by staff. Ms. Mandel not participating.

Alcone Marketing Group, Incorporated, 113316

1-1-98 to 12-31-00, \$106,161.95

Action: Approve refund as recommended by staff.

Forte' Software, Inc., 101445

4-1-00 to 9-30-00, \$85,917.27

Action: Approve refund as recommended by staff.

SMI Motors, Inc., 139881

4-1-01 to 6-30-01, \$57,583.69

Action: Approve refund as recommended by staff.

Dollar Rent A Car Systems Inc., 146290

4-1-98 to 3-31-01, \$110,154.36

Action: Approve refund as recommended by staff.

Nabil Shamma, 118775

1-1-98 to 3-31-98, \$103,535.87

Action: Approve refund as recommended by staff.

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MTI Technology Corporation, 151551

4-1-95 to 12-31-98, \$695,370.63

Action: Approve refund as recommended by staff.

MRD Marble, inc., 146292

1-1-98 to 6-30-01, \$128,665.13

Action: Approve refund as recommended by staff.

MPM Corporation, 90134

1-1-98 to 12-31-98, \$183,956.95

Action: Approve refund as recommended by staff.

Italee Optics, Inc., 145905

1-1-98 to 12-31-00, \$236,449.43

Action: Approve refund as recommended by staff.

Nobel Biocare USA Inc., 150724

1-1-01 to 3-31-01, \$150,951.73

Action: Approve refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTY AND DENIALS OF CLAIMS FOR REFUNDS, CONSENT**

With respect to the Special Taxes Matters Relief of Penalty and Denials of Claims for Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Aetna Life Insurance Company, 150655

1-1-00 to 12-31-00, \$153,189.00

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating.

Aetna Life Insurance Company, 150734

9-16-00 to 12-15-00, \$219,255.20

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating.

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Liberty Life Assurance Company, Boston, 151948

1-1-85 12-31-89, \$989,463.35

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Western Reserve Life Assurance Company of Ohio, 150477; Western Risk Specialists, Inc., 133763; and Liberty Bankers Life Insurance Company, 145223*, the Board made the following orders:

Western Reserve Life Assurance Company of Ohio, 150477

1-1-00 to 12-31-00, \$112,458.93

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Western Risk Specialists, Inc., 133763

3-1-01 to 3-31-01, \$3,253,611.73

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Liberty Bankers Life Insurance Company, 145223

1-1-00 to 12-31-00, \$305,744.74

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Port Stockton Food Distributors Inc., 151102

11-1-01 to 11-30-01, \$303,470.10

Action: Approve the refund as recommended by staff.

**PROPERTY TAXES NON-APPEARANCE MATTERS, NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

With respect to the Property Taxes Matters Not Subject to Contribution Disclosure Statute Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

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**Unitary Escaped Assessment**

On Fiber Communications, Inc., 7892  
2001, \$4,980,000.00 Escaped Assessment  
\$498,000.00 Penalty, Late Filing

Action: Adopt unitary escaped assessment and late-filing penalty as recommended by staff. Authorizing staff to process the escaped assessment as a correction to the 2001 Board Roll. Ms. Mandel not participating.

**Board Roll Changes**

2001 State-Assessed Roll

Action: Approve Board Roll changes as recommended by staff (Exhibit 2.7).  
Ms. Mandel not participating.

The Board recessed at 10:25 a.m. and reconvened at 10:30 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

**BUSINESS TAXES APPEALS HEARINGS**

KCI Therapeutic Services, Inc., 89000831350  
7-1-92 to 12-31-95, \$519,486.16 Tax

For Petitioner: Paul Nelson, Representative  
Michael Parkman, Tax Director

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative  
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether use tax assessed by the Sales and Use Tax Department on petitioner's leases of nonexempt medical equipment should be reduced or eliminated entirely, because the tax is imposed primarily on the lessees, who already paid tax to the Board by way of their own audits.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Bahram Shiralian, 89000369260, 89000369320, 89000369300

1-1-92 to 6-30-93, \$13,200.00 Tax

\$00.00 Penalty, Negligence

\$100,966.34 Tax

\$00.00 Penalty, Negligence

For Petitioner:

Martin A. Schainbaum, Attorney

Joel Slonski, CPA

Nicholas A. Tarsoman, Attorney

For Sales and Use Tax Department: Judy Nelson, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence supports additional credits for prepaid sales taxes and prepaid fuel taxes on petitioner's purchases of diesel fuel.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Orville Lewis, 111288

4-1-94 to 6-30-94, \$00.00 Tax

\$00.00 Penalty, Failure to File

For Petitioner:

Orville Lewis

Billie Lewis

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether relief from the interest is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, Ms. Mandel not participating, the Board directed staff to send a letter to the California Victims Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel present.

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Z.E.I. Acquisition Corporation, 89002234310

10-1-93 to 9-30-96, \$1,473,045.00 Tax

For Petitioner:

Joseph Vinatieri, Attorney

Dennis Award, President

Connie Turin, Accounting Manager

For Sales and Use Tax Department: Robert D. Tucker, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether the measure of disallowed sales for resale was established in accordance with the facts.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be deferred to the next Sacramento Board meeting.

Fred I. Eastman, 89000098620

7-1-93 to 12-31-96, \$00.00 Tax

\$00.00 Penalty, Negligence

Frederick Irwin Eastman, 89002371000

7-1-95 to 12-31-96, \$00.00 Tax

\$00.00 Penalty, Negligence

Frederick Irwin Eastman and Stanley Ross Schober, 89002289890

7-1-94 to 12-31-96, \$00.00 Tax

\$00.00 Penalty, Negligence

Frederick Irwin Eastman and James Hucker, 89002405250

1-1-96 to 12-31-96, \$00.00 Tax

\$00.00 Penalty, Negligence

For Petitioner:

Hearing Request Withdrawn

For Sales and Use Tax Department: None Assigned

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether add-on amounts, calculated at the applicable sales tax rate, that petitioners collected on sales of cold food products to go are excess tax reimbursement.

Whether petitioners' deductions for nontaxable food sales are overstated.

Whether relief is warranted from the 10 percent penalties for negligence.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**FINAL ACTION ON PETITION HEARD FEBRUARY 5, 2002**Mr. Klehs moved to redetermine the petition of *Barnes & Noble.Com*, 89872.

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Ms. Mandel offered a substitute motion to grant the petition. Failed for lack of a second.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal not participating, the Board ordered that the petition be submitted for decision, granting the petitioner 60 days to provide additional briefing, the Department 30 days to evaluate the documents, and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

### **FINAL ACTION ON PETITION HEARD FEBRUARY 6, 2002**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *KCI Therapeutic Services, Inc.*, 89000831350, be redetermined with adjustments.

### **ADMINISTRATIVE SESSION**

#### **BOARD COMMITTEE REPORTS**

##### **Legislative Committee**

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Legislative Committee report.

##### **Business Taxes Committee**

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report.

##### **Property Tax Committee**

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Property Tax Committee report.

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**PUBLIC HEARINGS****Proposed Adoption of Diesel Fuel Tax Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of Regulation 1434 is proposed to clarify who should file a claim for refund for the tax on tax-paid diesel fuel sold to the United States and how the claim should be filed, including clarification of who should file a claim for refund when the United States uses an access card to purchase diesel fuel.

Speakers: Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities as published (Exhibit 2.8).

**Proposed Amendment to Sales and Use Tax Regulation 1603. Taxable Sales of Food Products**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of the amendment to Regulation 1603 is proposed to re-write for clarity the definition of caterers, explain when sales to caterers of property related to the furnishing and serving of meals are sales for resale, clarify when caterers may purchase free of tax, to explain what charges are included in gross receipts, to explain when event planners are considered "caterers" within the meaning of the statute, to explain when sales by caterers to social clubs and fraternal organizations are sales for resale and when tips, gratuities, and service charges are included in gross receipts, when charged for premises supplied by the customer are included in gross receipts, and specify the application of tax to transactions by private chefs who are caterers and to food items sold through "honor boxes."

Speakers: David Doerr, Chief Tax Consultant, California Taxpayers Association  
David Jones, Legislative Representative, League of California Cities  
Anne Blue, Chief Legislative Representative, City of Los Angeles

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Regulation 1603, Taxable Sales of Food Products* as published (Exhibit 2.9).



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**Proposed Amendment to Sales and Use Tax Regulation 1699, Permits**

Janice Thurston, Assistant Chief Counsel, Legal Division stated for the recorded that the adoption of the amendment to Regulation 1699 is proposed to define when seller's permits may be issued to "buying companies," as defined, and to explain the conditions under which a seller's website may be issued a seller's permit.

Speakers: Ronald E. Merckling, Management Analyst II, City of Moreno Valley  
David Jones, Legislative Representative, League of California Cities  
Glen Bystrom, Principal, Ernst & Young LLP  
Barbara Hennessy, City Controller, City of Long Beach

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Klehs absent, the Board adopted Regulation 1699, Permits (Exhibit 2.10).

The Board adjourned at 2:30 p. m.

*The foregoing minutes are adopted by the Board on March 27, 2002.*